

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

1. The petitioner is a forty-one year old single parent of two children, ages twelve and eight years respectively. Petitioner works full-time as a video arcade

repairman. Petitioner receives Medicaid for Working People with Disabilities.

2. The petitioner's diagnoses include polycystic kidney disease (end stage renal disease) and gum disease. The petitioner is in need of a kidney transplant.

3. Petitioner had not received dental treatment from the time he was a high school student until he was evaluated for a transplant. Part of the assessment for an organ transplant is for the patient to be infection free and to receive a dental clearance.

4. According to a written statement by Dr. Kevin Brown of Associates for Dental Care, petitioner has active periodontal infection with advanced periodontitis and apical pathology on numerous teeth.

5. To receive a dental clearance, petitioner needs to have at least 11 teeth extracted by an oral surgeon and full mouth gross debridement and planing. The projected cost is \$1,817 to \$2,204 including \$1,650 for the extractions and \$664 to \$1,140 for the debridement and planing.

6. Dr. Mark Weidner, transplant nephrologist, and Dr. Antonio DiCarlo, Director of Transplant Surgery, provide care for petitioner. In a letter dated September 21, 2006, Dr. Weidner explained that the petitioner has been following

protocol to be listed for a kidney transplant since October, 2005. The only treatment options for patients with end stage renal disease are a kidney transplant or dialysis; without treatment, the patient will die. The problem with dialysis is that dialysis patients are usually unable to work due to the schedule of three treatments per week at three to four hours each treatment and the resulting side effects. In addition, dialysis patients have more complications and a shorter life span than transplant patients. In petitioner's case, he will not be listed as ready for a transplant until he receives a dental clearance. After a transplant, patients receive immunosuppressive medications to help the body accept the new organ. In doing so, the patient is at greater risk of infection including lethal effects. Until the petitioner's underlying dental health is cleared up, he will not be considered infection free and ready for transplant.

7. Petitioner testified that there is a potential organ match, but he will be unable to have a transplant done until he has extensive dental work done. Petitioner testified that he has been putting off dialysis because he does not believe he will be to work while on dialysis.

8. On August 1, 2006, Susan Flanders, a caseworker, entered a Case Action Log note that petitioner "needs

extractions. Medicaid has paid his max. Explain ED applying for GA. . ."

9. On August 8, 2006, petitioner applied for general assistance. Petitioner was denied general assistance for a medical emergency need because he refused to use available resources. The available resource is a savings account set up for his daughter and containing \$480. Petitioner is a co-signer on the account.

10. Petitioner testified that he created the account in 2004 before he became the custodial parent. He set up the account as a college fund for his daughter. Because his daughter is a minor, petitioner is listed on the account. Petitioner does not consider the funds as his property.

11. Petitioner filed for a fair hearing on August 9, 2006.

12. The fair hearing set for September 1, 2006 was continued to September 29, 2006.

ORDER

The Department's decision is affirmed.

REASONS

The Vermont Medicaid program operates under a federal-state framework to help meet the costs of medical treatment

for families with dependent children, the aged, and the disabled whose income and resources are not sufficient to pay the costs of necessary medical care. 42 U.S.C. § 1396. Medicaid Manual M100. "Medicaid covers most, but not all, medically necessary medical care and services provided to eligible individuals (see Sections M500-M999 for covered services)." M100.

Vermont has promulgated regulations covering organ transplants and dental services. Petitioner's case crosses the boundaries of these regulations. Petitioner's need for a kidney transplant led to an assessment of his dental health and the conclusion that petitioner needed extensive dental work before a transplant can occur. Although the need for dental work is tied to making a kidney transplant feasible, the question remains whether the dental work should be covered as a medical service.

Kidney transplants are covered pursuant to M613. The standards for coverage include that the petitioner meets the medical criteria for a kidney transplant, including:

- a. Test lab results within identified limits to assure successful transplantation and recovery.
- b. Diagnostic evaluations of the beneficiary's medical and mental conditions that indicate there will be no significant adverse effect upon the outcome of the transplantation.

- c. Assessment of other relevant factors that might affect the clinical outcome or adherence to an immunosuppressive regimen and rehabilitation program following the transplant.

M613(3).

Based on the above criteria, petitioner's dental assessment demonstrate that he has a medical condition that can have a significant adverse impact upon the outcome and that can affect the adherence to an immunosuppressive regimen.

Significant dental work needs to be done before petitioner will be cleared for a transplant.

Dental work is covered in two sections of the Medicaid regulations. In terms of preventive, diagnostic or corrective dental procedures, there is an annual cap of \$475. M621. However, medical and surgical services of a dentist are exempted from this cap and covered as medical services. M619.

The state regulations on medical and surgical services are governed by federal law which carved out an exception for these services as medical services. The genesis of this change is the Omnibus Budget Reconciliation Act of 1987. Physician services covered under the Medicaid program include:

medical and surgical services furnished by a dentist (described in section 1395x(r)(2) of this title) to the extent such services may be performed under State law either by a doctor of medicine or be a doctor of dental medicine. . .

42 U.S.C. § 1396d(a)(5)(B).

See 42 C.F.R. § 440.50(b). Vermont has incorporated this provision as part of M619.

The Vermont regulations spell out covered services and conditions for coverage. These regulations state:

M619.3 Covered Services

Services that have been pre-approved for coverage are limited to:

- biopsies;
- repair of lacerations;
- excision of a cyst or tumor;
- reconstructive surgery;
- reduction of a fracture;
- repair of temporomandibular joint dysfunction, including surgical treatment;
- problem-focused limited oral evaluation;
- problem-focused limited re-evaluation
- incision and drainage of abscess;
- emergency treatment of dental pain-minor procedures

With the exception of services authorized for coverage via M108, other services are not covered.

M619.4 Conditions for Coverage

Tooth repair, replacement or other dental procedures, even if they are a medically necessary part of the surgery, are addressed under the dental benefit and subject to the limitations of M620 or M621 as applicable.

The petitioner's proposed dental work does not meet the listed criteria in the covered services and appears to be precluded under conditions for coverage.

Because petitioner's dental work cannot be covered through the Medicaid program, the question is whether any other program can cover these costs. Because petitioner does have a medical emergency pursuant to Welfare Assistance Manual (W.A.M.) 2602.3, petitioner may qualify for general assistance if he meets the eligibility requirements.

The general assistance program requires applicants to exhaust all available resources and income as a condition of eligibility. W.A.M. 2602. In W.A.M. 2600.3, available resources are defined as:

. . .cash on hand or in a bank or other financial institution, including Christmas clubs and U.S. Savings bonds or other negotiable instruments that can be converted into cash within 24 hours when responding to an immediate emergency need for the first time. . .

When petitioner applied for general assistance, petitioner was told that he needed to use the funds in a



savings account for his dental work before the Department could pay the remaining costs. Petitioner refused to do so.

Several years ago, petitioner started a savings account for his daughter. The account is in both their names. Because these funds are not in trust for his daughter or do not have limitations upon petitioner's ability to withdraw funds, these funds are legally available to petitioner. Petitioner's concern that these funds remain for his daughter is understandable. Unfortunately, these funds must be considered an available resource. Until petitioner uses these funds, he will not be eligible for general assistance to cover his dental needs.

Accordingly, the Department's decision is affirmed. 3  
V.S.A. § 3091(d); Fair Hearing Rule No. 17.

# # #